

1 or...

2 MR. ARGENBRIGHT: I can't give you a  
3 specific instance, but the parties tend to have  
4 discussions, ongoing discussions, about what things  
5 cost and what it costs to provision things, et  
6 cetera. And if done in the right pricing context,  
7 to establish the appropriate rate, that's how it  
8 should be done and not through just sending us a  
9 bill.

10 MR. ANTONIOU: Could we perhaps provide  
11 some other examples? Would that be helpful?

12 MS. DAILEY: Briefly. How about one  
13 example.

14 MR. PITTERLE: In trying to respond to  
15 your question, one example might be a new  
16 technology that comes out that wasn't contemplated  
17 by the original contract, such that the parties are  
18 ordered by Commission order or Verizon is ordered  
19 to provide access to that technology. Line sharing  
20 for DSL might be an example, where there might be  
21 considerable OSS costs incurred by Verizon to  
22 provide OSS access for ordering, provisioning,

1 maintenance, testing associated with the new  
2 product called "line sharing."

3           To the extent that there are startup  
4 costs, et cetera, that are associated with  
5 upgrading or updating the OSS systems, that might  
6 be a situation where recovery of those was never  
7 contemplated in the original agreement. That  
8 situation has now been ordered to be provided, and  
9 Verizon would want to reserve the right to recover  
10 such costs. Those are OSS-type startup costs.

11           MR. ANTONIOU: And we have one final quick  
12 example that would be beyond just--a specific item  
13 but as the methodology.

14           MR. DALY: One other example that I think  
15 is very responsive to your question is that, as I  
16 understand it today, there is currently a legal  
17 challenge with respect to TELRIC methodology. And  
18 depending on the outcome of the TELRIC methodology,  
19 we might--Verizon may have an opportunity to  
20 revisit the rates that are decided as a result of  
21 this interconnection--I'm sorry, this arbitration  
22 proceeding downstream, depending on when and what

1 the outcome of that legal challenge is.

2 MS. PREISS: Isn't that addressed by your  
3 change-of-law provisions?

4 MR. ANTONIOU: It may be, but the reason  
5 we have a dispute is that WorldCom wants to put in  
6 a sentence that says that, in effect, the rates in  
7 that schedule are the rates, and you can't get any  
8 other reimbursement. We are concerned that might  
9 be viewed as a voluntary agreement that  
10 notwithstanding a change in law that we somehow  
11 given away that which we otherwise could do.

12 MS. PREISS: WorldCom, is that your view  
13 of the language you offered, that it trumps the  
14 change-of-law provision?

15 MR. ARGENBRIGHT: No, that's not true.  
16 If, as I was stumbling before, if such costs or  
17 changes are ordered by a Commission, we recognize  
18 that the agreement would have to be amended in  
19 accordance with the order. It's the instance of  
20 not having that direction from a Commission or  
21 other authority to incorporate those changes and  
22 new pricing, if that were the case.

1 MS. PREISS: Would WorldCom be willing to  
2 modify its language to make clear that it does not  
3 trump the general change-of-law provision?

4 MR. TROFIMUK: Yes, we would. Subject to  
5 working out the language, we would.

6 MS. PREISS: Would that be satisfactory to  
7 Verizon?

8 MR. ANTONIOU: It certainly is helpful  
9 with respect to the last category issue that  
10 Mr. Daly brought up, but I don't see how we would  
11 obtain the protection in the case of the other  
12 examples we had, the first one I raised about  
13 expending funds to get a license. That certainly  
14 isn't in the pricing schedule right now. And if it  
15 occurred, it seems to me under WorldCom's language  
16 that we wouldn't be able to go back and be  
17 reimbursed for it. They would point to it and say  
18 "It's not in your pricing schedule," and you can't  
19 go back and get reimbursed otherwise.

20 MS. DAILEY: AT&T, I wanted to hear your  
21 position on this.

22 MR. CEDERQVIST: This is not an issue for

1 us; right?

2 MR. LOUX: That's right.

3 MS. DAILEY: I confused.

4 I do have one final question just to  
5 understand IV-36, and that is: Should the  
6 Interconnection Agreement contain a schedule of  
7 itemized charges? And my question really is for  
8 the attorneys, which is: If the Commission  
9 resolves III-18, II-1 and II-2, would that take  
10 care of this issue? III-18 is the general tariff  
11 Interconnection Agreement, and II-1 and II-2 are  
12 the pricing issues.

13 MR. ANTONIOU: For Verizon, I think  
14 generally that's right.

15 MR. KEFFER: I don't know what hat you're  
16 wearing right now, Chris. She threw the question  
17 to counsel.

18 MS. DAILEY: Right.

19 MS. FAGLIONI: I need to go back and look  
20 at the issues and the contract language associated  
21 with it. There are a series of these pricing terms  
22 and conditions issues that overlap in the sense

1 that we have the tariff versus Interconnection  
2 Agreement, but then a set of issues are built  
3 around the fact that we are also sponsoring our  
4 pricing attachment as the right language with  
5 WorldCom.

6 And I think that's a fuzzy line right now  
7 as to that overlap.

8 MS. DAILEY: Basically that's what we are  
9 talking about. We are talking about what the  
10 actual prices are and we are talking about the  
11 concept of the tariff versus the Interconnection  
12 Agreement.

13 MS. FAGLIONI: In Verizon's model  
14 Interconnection Agreement it proposes what is calls  
15 a "pricing attachment," which they're not the  
16 numbers, they're the words that say where do you  
17 look to get the right price? It's a map, if you  
18 will.

19 And all I'm worried about is in answering  
20 your question, I want to make sure you understand  
21 we have with WorldCom the issue of the words of the  
22 pricing attachment above and beyond the dispute of

1 tariff versus Interconnection Agreement.

2 MS. DAILEY: I just have one more comment.  
3 When counsel briefed this general tariff versus  
4 Interconnection Agreement, I would like them to  
5 address the Commission's ruling in the matter of  
6 Bell Atlantic Delaware versus Global Maps, and I  
7 believe the citation is 15 FCC Record 12-946, and  
8 that was reaffirmed on reconsideration at 15 FCC  
9 Record 59-97. I know that sounds weird, but I  
10 believe that is the correct citation. Sounds like  
11 it's backwards, but I double-checked that.

12 MR. DYGERT: I got a proposal a little  
13 while ago from Mr. Harrington that when we break  
14 for lunch, we do it for a short period of time.

15 MS. KELLEY: I had one follow-up question  
16 that if I could quickly ask it--I think it should  
17 be quick--I think we are done with at least this  
18 subpanel.

19 And this is for you, Mr. Antoniou.

20 CROSS-EXAMINATION

21 MS. KELLEY: About IV-32 you gave several  
22 examples about other costs. When you talked about

1 third-party IP rights, you said Verizon would go to  
2 the Commission.

3 Am I right that in each of the examples  
4 you gave, you would contemplate a Commission order  
5 indicating that imposition of these costs are  
6 appropriate?

7 MR. ANTONIOU: No, that's not correct. In  
8 the case of intellectual property rights, licensing  
9 rights we had to expend funds to obtain on behalf  
10 of a CLEC, we would be looking for the CLEC to pay  
11 that. If the CLEC paid that for those rights, then  
12 we wouldn't have a dispute. If they disagreed we  
13 had a dispute, we may choose to go through the  
14 dispute resolution of the contract.

15 Alternatively, we may go to the Commission  
16 and ask for more global result. I would have to  
17 look at the particulars, it may be that the  
18 individual IP rights only assisted that CLEC. It  
19 may be it's more global. It would be  
20 fact-specific.

21 MS. KELLEY: I wanted to make sure that my  
22 understanding of your position is you don't want



1 the language we proposed because you want to  
2 reserve the right to unilaterally charge us for  
3 something without a Commission having ever said  
4 that that's an appropriate charge, and I'm right  
5 about that?

6 MR. ANTONIOU: I certainly wouldn't  
7 propose it the way you said it. I would say that  
8 if we expend money to get a right using best  
9 efforts on your behalf, WorldCom's behalf, that we  
10 would take that which we spent and show it to you,  
11 and we would ask you to pay for it, or at least we  
12 might do that. That's how I would say it.

13 MS. KELLEY: I understand. Thanks.

14 MS. PREISS: Could I follow up on that.  
15 It's Verizon's position that that's true with  
16 respect to expenditures by Verizon with respect to  
17 services set forth in this agreement and priced in  
18 table one? I'm quoting from the WorldCom language  
19 on IV-32.

20 MR. ANTONIOU: With regard to UNes, the  
21 prices that, say, come out of this proceeding, it  
22 seems to us for those items the prices are what you

1 all will order, putting to one side what Mr. Daly  
2 said if there is a different cost methodology, but  
3 if there is not different methodology, it's like  
4 Ragu. It's all in there.

5           Alternatively, if we have to do this sort  
6 of thing I discussed just now with Ms. Kelley about  
7 expending additional efforts for IP rights, it's  
8 not in there.

9           MS. PREISS: I guess I just don't  
10 understand the IP rights example. It's nothing I'm  
11 conversant with. Does this have to do with  
12 obtaining IP rights with respect to services that  
13 are offered under the ICA?

14           MR. ANTONIOU: Those services--let me try  
15 to be more responsive. In using the UNE, WorldCom  
16 or another carrier might wish to do certain things,  
17 and it may be that the licensing rights that we  
18 have from some vendor like Lucent limit what we  
19 could do, and maybe only that we could use those  
20 rights for ourselves.

21           This is more theoretical. It hasn't yet  
22 come up in a particular case.

1 MS. PREISS: Could you use any example  
2 that actually has come up, or are there none?

3 Maybe I could short-circuit this. I take  
4 it your answer is yes, Verizon is seeking to  
5 reserve for itself the right to levy additional  
6 charges on WorldCom related to services that are  
7 offered pursuant to this agreement and priced under  
8 this agreement like UNEs because UNEs are the  
9 examples you're using; is that correct?

10 MR. ANTONIOU: Is it possible that we  
11 could do that in certain circumstances? Yes. As a  
12 general matter, no, we believe the rates in the  
13 contract would apply. I think the example  
14 Mr. Pitterle addressed if we are directed to  
15 provide a new service, I think he mentioned line  
16 sharing--

17 MS. PREISS: I was trying to figure out  
18 whether we are talking about services that are  
19 covered by this agreement, you're reserving the  
20 right to impose additional charges as opposed to  
21 services that some hypothetical future service that  
22 you might be required to provide, which would be, I

1 believe, under WorldCom's language subject to  
2 future negotiation.

3           So, I'm limiting my question to services  
4 you're already offering that are within the scope  
5 of this Interconnection Agreement that we are  
6 arbitrating here and will be priced in the context  
7 of this arbitration.

8           What you're seeking to reserve to yourself  
9 is the ability to charge for something,  
10 expenditures associated with incurring intellectual  
11 property rights regarding the use of some UNE  
12 priced under this agreement, for example.

13           MR. ANTONIOU: I think clearly the example  
14 you just raised about intellectual property, yes,  
15 we would like to be made whole.

16           As a general matter, and I can't think of  
17 any others right now, we think the prices are what  
18 they are, and we would not be looking and don't  
19 think it would be appropriate for us to go back and  
20 say, "Oh, now we believe there is something else  
21 that we should be compensated for."

22           MS. PREISS: Okay.

1 to say being on the Verizon panel before lunch, so  
2 your person can get in.

3 MS. KELLEY: There are several issues. We  
4 could certainly try or we could move this to  
5 Thursday, but that's the only day he's available  
6 next week.

7 MR. ANTONIOU: Verizon is happy to stay.

8 MR. DYGERT: So, the proposal is not to  
9 take a quick lunch break but keep going?

10 MR. KEFFER: My proposal was to do I-9.

11 MR. DYGERT: Before lunch.

12 MR. KEFFER: At least the cross of the Cox  
13 and AT&T witnesses as well as any staff questioning  
14 of those witnesses.

15 MS. KELLEY: I-9 is a WorldCom issue, so  
16 if we are going to do it...

17 (Off the record.)

18 MR. DYGERT: So, for the record, the set  
19 of issues we are doing right now is IV-95, IV-101,  
20 IV-106, V-11, IV-113, VI-1(N), VI-1(O), VI-1(R),  
21 and I-9. All right?

22 My understanding is that with the possible

1 exception of I-9, the parties have waived cross on  
2 all the issues I just read; is that correct?

3 MS. KELLEY: That's correct.

4 MS. FAGLIONI: That's correct.

5 MR. HARRINGTON: There is cross on I-9  
6 from at least two or three parties.

7 MR. DYGERT: All right. Let's begin with  
8 the parties' cross on I-9, if we could.

9 MS. KELLEY: If I could just--we are happy  
10 to go in any order we want. If we do that, we will  
11 not get Mr. Trofimuk out of here by 2, who we are  
12 trying to get out when.

13 MR. DYGERT: Then we will put off cross on  
14 I-9 until afterwards. Let's start with the general  
15 terms issues in subpanels two, three and four,  
16 which I guess means that we only have staff cross.

17 QUESTIONS FROM STAFF

18 MR. FIRSCHEIN: Let's start with issue  
19 IV-95. I just have one brief question for  
20 WorldCom, and that is: I would like WorldCom to  
21 clarify its position on this issue.

22 If I understand WorldCom correctly, it's

1 claiming that the additional phrase as proposed by  
2 Verizon in this provision is unnecessary because  
3 the pricing attachment will establish the relevant  
4 rates. Do I understand that correctly?

5 MR. HARTHUN: Our opposition to that  
6 phrase, it's not clear what that phrase means, and  
7 I don't think Verizon's testimony clarifies any  
8 further what they mean by "provided by applicable  
9 law."

10 MR. FIRSCHEIN: Okay, then. I would like  
11 to ask Verizon if it could concisely explain the  
12 meaning of additional phrase that it requested to  
13 be added to this provision.

14 MR. ANTONIOU: Okay. The discussion we  
15 had on one of the preceding issues, in particular  
16 we talked about the possibility of having to expend  
17 resources to get intellectual property rights or  
18 say in the case of developing OSS for line sharing  
19 or some other service, that would be something that  
20 if it were ordered by a state commission, we  
21 believe would be provided under applicable law,  
22 that we would obtain that reimbursement directly

1 from a single CLEC or from all CLECs or any number  
2 of affected CLECs.

3           So, our concern with the language as  
4 stated is it could lead to the outcome that I  
5 explained earlier that I was concerned about on  
6 those sorts of issues, and by putting in, unless  
7 provided by applicable law, we would not have given  
8 up through the contract a right that we would have  
9 to reimbursement through the regulatory process.

10           MR. FIRSCHEIN: Okay. Given that the  
11 parties will have a pricing attachment, why is this  
12 provision necessary at all? If I could start with  
13 WorldCom.

14           MR. HARTHUN: It's necessary to put the  
15 pricing table, the pricing exhibit in context.  
16 Those prices are then established by law, and they  
17 should be the prices that govern in this contract,  
18 subject to changes in the law.

19           MR. FIRSCHEIN: Verizon?

20           MR. ANTONIOU: We don't think we need the  
21 clause in here.

22           MR. FIRSCHEIN: I'm sorry?



1           MR. ANTONIOU: I think your question was,  
2 why do the parties believe this clause should be  
3 here? Verizon doesn't believe Section 8.2 should  
4 be here. Verizon was willing to live with it being  
5 here if WorldCom insisted if we could put the  
6 clause unless otherwise provided under applicable law.  
7 So, if WorldCom doesn't want the clause in there,  
8 we are happy about that. If they do want it in  
9 there, we would like to have the proviso for the  
10 reasons we indicated.

11           MR. HARTHUN: I may have misunderstood  
12 your question. Was your question regarding the  
13 additional phrase or the whole provision?

14           MR. FIRSCHEIN: The whole provision.

15           MR. HARTHUN: Oh, I was answering with  
16 respect to that phrase. I think the provision, as  
17 a whole, needs to be in here.

18           Again, to put the pricing table in  
19 context, and going back to what Mr. Argenbright  
20 spoke to earlier, it is inappropriate, and it's our  
21 position that Verizon should not try to assess or  
22 charge WorldCom, after the effective date of this

1 agreement, charges that it develops or unilaterally  
2 pushes in WorldCom's direction as opposed to those  
3 that are established by the Commission.

4 MR. FIRSCHEIN: Okay. So, just to  
5 summarize, your position is that the provision as a  
6 whole is necessary and not made moot or  
7 inappropriate due to the pricing attachment.  
8 However, the additional language requested by  
9 Verizon is not necessary?

10 MR. HARTHUN: Yes to the first part,  
11 and--yes, yes. Sorry.

12 MR. FIRSCHEIN: Just so I understood.

13 Let's move on to the next issue, which is  
14 IV-101, so give me one moment.

15 MS. KELLEY: WorldCom has an additional  
16 witness on IV-101, although I don't think that Mr.  
17 Trofimuk is needed for this issue. He did sponsor  
18 testimony on this, but Ms. Roscoe is the subject  
19 matter expert on this.

20 MR. DYGERT: Would you please swear  
21 Ms. Roscoe.

22 Whereupon,

1 LISA ROSCOE

2 was called for examination by the Commission and,  
3 after having been duly sworn by the notary public,  
4 was examined and testified as follows:

5 MR. HARRINGTON: If there is not an issue  
6 where the constrained witness has to be here, we  
7 should skip it and move on to things that are  
8 necessary. And that includes our witness, too.

9 MR. DYGERT: At some point we need to stop  
10 changing the way things work here, and we have an  
11 order that we set up at this point to accommodate  
12 everyone's concerns, and staff has, I think, very  
13 little questioning on these issues, so let's go in  
14 the order that we sat.

15 MR. FIRSCHEIN: I have one brief question  
16 with regard to issue IV-101, and it regards  
17 Verizon's proposal. Verizon's proposal states that  
18 if a regulatory body does not act within 30 days,  
19 then the arbitration award will become effective  
20 immediately, and WorldCom objects to that language.

21 My question for WorldCom is: Why would a  
22 delay of 30 days before an arbitration award become

1 effective, why is that short delay material?

2 MS. ROSCOE: My reading of the paragraph  
3 suggests they may submit within 30 days of the  
4 arbitration decision, and then the Commission has  
5 an additional 30 days.

6 The main objection that WorldCom has is  
7 basically the finality issue. One of the  
8 underlying and fundamental aspects of arbitration  
9 is finality. The way this provision is structured  
10 is effectively giving the arbitrator's decision  
11 basically looking at some advisory opinion before  
12 there is a final decision, and we would like to  
13 look at the arbitration as final and binding.

14 MR. FIRSCHEIN: My understanding of your  
15 earlier testimony was that the reason that  
16 arbitration is of importance to you is not due to  
17 its finality but because of its speed. And because  
18 of that reason, if you could explain why an  
19 additional delay, whether 30 days or 60 days, would  
20 be material.

21 MS. ROSCOE: The process is designed to be  
22 60 days. An additional days effectively doubles

1 the process. So, if you're looking at expediency,  
2 that would add additional time to the process.

3 If there is assurance on the part of  
4 WorldCom that there is finality with regard to the  
5 Commission's decision, and as long as the language  
6 is looked at as complete and final at that point,  
7 subject to limited review of the Commission, that's  
8 really what we are looking for.

9 MR. FIRSCHEIN: Okay. Based on your  
10 experience, approximately how long does an  
11 arbitrator take to reach a decision?

12 MS. ROSCOE: It could be anywhere from two  
13 weeks to sixty days. It depends on the arbitrator,  
14 the particular issues that the arbitrator needs to  
15 address, the arbitrator's calendar. Typically, we  
16 look to an arbitrator to render a speedy decision,  
17 but that isn't necessarily mandated here.

18 MR. FIRSCHEIN: I have one question for  
19 Verizon now, and if you could just either confirm  
20 or deny that WorldCom's assessment of your position  
21 is correct, is what you're saying that if we accept  
22 your additional language, that there would be at

1 most a 60-day delay, or are we talking about  
2 combined 30-day delay before an arbitration award  
3 would either be accepted or overturned?

4 MR. ANTONIOU: Sixty days, and just one  
5 other point, and that is this isn't so to speak our  
6 proposal. Our view is if we can't reach agreement  
7 on what the terms would be for an ADR process,  
8 then, as a legal matter, we cannot be forced into  
9 this process. We are willing to do this because we  
10 did this with AT&T. We provided these provisions  
11 to WorldCom. They wanted to make a number of  
12 changes, we agreed to almost all of them. And this  
13 is, I think, basically the sticking point.

14 So, if we are going to waive our right not  
15 to have to do this, and we are going to do it, it's  
16 important to us that we don't have to unscramble  
17 the egg. If there is an arbitrator's decision  
18 rendered, it should be final. The Commission  
19 should either affirmatively say this is fine or 30  
20 days should pass from when we give them the  
21 decision, and they do nothing. In either case it's  
22 deemed final decision and we won't have to

1 unscramble the egg.

2 MR. FIRSCHEIN: One final question for  
3 WorldCom. If you could just briefly explain why  
4 you think that an arbitrator's award should be  
5 final.

6 MS. ROSCOE: That's typically the process,  
7 and then if it's subject to review, it's limited  
8 review at best. It's really not reassessing all  
9 the issues in the case. It's assuming under the  
10 arbitration regime that the arbitrator has great  
11 discretion within the context of the agreement of  
12 the parties.

13 MR. FIRSCHEIN: So, if I understand you  
14 correctly, you would be accepting of a provision  
15 which would allow some limited review by the  
16 Commission of the arbitration award?

17 MS. ROSCOE: Well, absolutely. I mean,  
18 the same limited review that basically you could  
19 have within the courts, which is quite limited.

20 MR. FIRSCHEIN: How would you define  
21 "limited review"?

22 MS. ROSCOE: Well, it's defined pretty

1 clearly within a legal context.

2 MR. ANTONIOU: I understand what  
3 Ms. Roscoe is getting at under the Arbitration Act,  
4 to say that there would be an arbitrator and/or  
5 capricious finding or a finding not consistent with  
6 public policy. That's not what we are talking  
7 about here. We are talking about the Commission  
8 could look at it and decide to do anything in 30  
9 days, in which case it goes into effect. They  
10 could look at the standard that Ms. Roscoe refers  
11 to I just mentioned.

12 Alternatively, they could look at the case  
13 de novo, and they say, "We look at this and we  
14 don't like the decision, and we could do it  
15 entirely differently." That is the only kind of  
16 arbitration procedure we could voluntarily agree to  
17 in this proceeding. If that's not what's going to  
18 be agreed to, then we go back to our position,  
19 which is we could use any sort of legal remedy  
20 available to the court, et cetera.

21 MR. FIRSCHEIN: I understand your  
22 respective positions. Thank you.



1           Let's move on to the next issue. Let's go  
2 to IV-106.

3           Incidentally, I have a global question  
4 with regard to all these general terms and  
5 conditions issues, and that is that I'm curious to  
6 know whether or not these issues have arisen in  
7 other arbitrations? And if so, how they were  
8 treated by those arbitrators. I don't see the need  
9 or quite honestly we don't have the time to get  
10 into that question with regard to all of those  
11 issues now, but I hope that that is an issue which  
12 the parties would address in their posthearing  
13 briefs. So, please just keep that in mind.

14           Now, with regard to IV-106, I have one  
15 question again for WorldCom.

16           In Verizon's testimony Verizon offered to  
17 WorldCom the language that Verizon has agreed to  
18 with AT&T, and I don't believe that WorldCom has  
19 addressed why that language is not sufficient or  
20 not appropriate. So, I would like to ask WorldCom  
21 if they could quickly answer that.

22           MR. HARTHUN: I need a page.